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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ALEX TAYLOR,

11 Plaintiff,

12 v.

13 RELIANCE STANDARD LIFE
14 INSURANCE COMPANY, et al.,

15 Defendants.

CASE NO. C10-1317JLR

ORDER GRANTING SUMMARY
JUDGMENT TO PLAINTIFF
AND DENYING WITHOUT
PREJUDICE REQUEST FOR
ATTORNEYS' FEES AND
COSTS

16 **I. INTRODUCTION**

17 In this matter, Plaintiff Alex Taylor ("Mr. Taylor") appeals Defendant Reliance
18 Standard Insurance Company's ("Reliance") decision to terminate his long term disability
19 ("LTD") benefits. (*See generally* Compl. (Dkt. # 1).) Reliance filed a motion for
20 summary judgment, which the court denied on September 2, 2011. (S.J. Order (Dkt. #
21 46).) In denying Reliance's motion, the court concluded that Reliance abused its
22 discretion in terminating Mr. Taylor's benefits and reasoned that Reliance arbitrarily

1 refused to credit Mr. Taylor’s uncontroverted evidence of disabling cognitive dysfunction
2 and failed to engage in a meaningful dialogue with Mr. Taylor regarding his claim.¹ (*Id.*
3 at 29-30.) At the pretrial conference, which was held on September 6, 2011, the parties
4 agreed that a trial was not necessary; however, they disagreed as to the appropriate
5 remedy in light of the court’s ruling on summary judgment.

6 Mr. Taylor has requested that the court retroactively reinstate his benefits, award
7 pre-judgment interest at a rate of ten percent, and award over \$56,000 in attorneys’ fees
8 and costs. (Trial Br. (Dkt. # 47).) Reliance contends that (1) any remedy is premature
9 because the court has not made any findings or granted summary judgment in Mr.
10 Taylor’s favor; (2) if the court elects to award a remedy, it should remand, rather than
11 reinstate Mr. Taylor’s benefits; (3) if the court reinstates Mr. Taylor’s benefits, it should
12 not award benefits after October 2010 because the “any occupation” eligibility standard
13 went into effect at that time; (4) the law does not support Mr. Taylor’s request for pre-
14 judgment interest at a rate of ten percent; and (5) Mr. Taylor’s request for attorneys’ fees
15 is improper. (Resp. (Dkt. #56).)

16 Having considered the briefing of the parties, the administrative record, and the
17 relevant law, the court grants summary judgment to Mr. Taylor and orders Reliance to
18 pay Mr. Taylor benefits from the time they were terminated until the time that the “any
19 occupation” eligibility standard went into effect. The court further remands Mr. Taylor’s
20 case to Reliance for a determination of whether Mr. Taylor is entitled to receive benefits

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22 ¹ The court also provided a detailed factual background (*see generally* S.J. Order), which
it now incorporates by reference into this order.

1 under the “any occupation” eligibility standard, and orders Reliance to accept additional
2 evidence from Mr. Taylor regarding his continuing disability and to engage in a full and
3 fair review of his file. The court awards Mr. Taylor pre-judgment interest at the rate
4 provided for in 28 U.S.C. § 1961 and more fully explained in this order. The court orders
5 the parties to submit to the court, within 14 days of the entry of this order, a proposed
6 order of judgment that reflects the court’s disposition of this matter as set forth in this
7 order, including a calculation of the total amounts of back-benefits and pre-judgment
8 interest currently owed to Mr. Taylor. Finally, the court denies without prejudice Mr.
9 Taylor’s request for attorneys’ fees; Mr. Taylor must file any amended motion within 21
10 days of the entry of this order.²

11 II. ANALYSIS

12 A. Summary Judgment

13 Ordinarily, summary judgment is appropriate if there is no genuine issue as to any
14 material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ.
15 P. 56(a). In actions under the Employee Retirement Income Security Act of 1974
16 (“ERISA”), 29 U.S.C. § 1001, *et seq.*, like the one currently before the court, however, “a
17 motion for summary judgment is merely the conduit to bring the legal question before the
18 district court and the usual tests of summary judgment, such as whether a genuine dispute
19 of material fact exists, do not apply.” *Bendixen v. Standard Ins. Co.*, 185 F.3d 939, 942

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21 ² Reliance did not request oral argument, and Mr. Taylor requested a hearing only if the
22 court required additional explanation of his request for attorneys’ fees. (Resp. (Dkt. # 57) at 9.)
The court has determined that oral argument would not aid its resolution of Mr. Taylor’s fee
request and therefore issues this order without a hearing.

1 (9th Cir. 1999), *overruled in part on other grounds by Abatie v. Alta Health & Life Ins.*
2 *Co.*, 458 F.3d 955, 966-69 (9th Cir. 2006) (en banc)); *see also Nolan v. Heald Coll.*, 551
3 F.3d 1148, 1154 (9th Cir. 2009). Thus, a summary judgment motion resting on the
4 administrative record is not a typical summary judgment, but rather, is a procedural
5 vehicle for determining whether benefits were properly granted or denied, and under the
6 facts of this case, the court reviews for an abuse of the plan administrator's discretion.
7 *See Bendixen*, 185 F.3d at 942-43.

8 In deciding Reliance' motion for summary judgment (Dkt. # 35), the court
9 determined that Reliance improperly terminated Mr. Taylor's benefits, thereby abusing
10 its discretion. (*See S.J. Order.*) Mr. Taylor, therefore, is entitled to summary judgment.
11 Under Federal Rule of Civil Procedure 56(f), the court may grant summary judgment to a
12 nonmovant after giving notice and a reasonable time to respond. Fed. R. Civ. P. 56(f).
13 On January 3, 3012, the court entered an order notifying the parties of its intent to grant
14 summary judgment to Mr. Taylor and allowed the parties seven days to file any
15 objections. (Order (Dkt. # 59).) Neither party has filed an objection, thus the court
16 grants summary judgment to Mr. Taylor pursuant to Federal Rule of Civil Procedure
17 56(f).

18 **B. Remedy**

19 Mr. Taylor asks the court to order Reliance to reinstate his benefits retroactive to
20 November 8, 2006. (Trial Br. at 2.) He contends that payment of benefits from this time
21 through the present is warranted. (Reply (Dkt. # 57) at 7.) Mr. Taylor relies primarily on
22 the Ninth Circuit's decision in *Pannebecker v. Liberty Life Assurance Company of*

1 *Boston*, 542 F.3d 1213 (9th Cir. 2008). (*See generally* Trial Br.) Reliance, on the other
2 hand, contends that the proper remedy is a remand for further factual development in
3 light of the court’s ruling that Reliance failed to engage in a meaningful dialogue. (Resp.
4 at 3.) If the court reinstates Mr. Taylor’s benefits, Reliance maintains that the court
5 should not award benefits beyond October 2010 because at this time the benefits
6 eligibility standard under the Policy changed. (*Id.*) Indeed, under the Policy, an insured
7 may receive benefits for 60 months if he or she is unable to perform the material duties of
8 his or her “regular occupation”; however, after 60 months, an insured only receives
9 benefits if he or she is unable to perform the material duties of “any occupation.” (S.J.
10 Order at 3-4 (quoting AR 602 (Policy)).)

11 In the Ninth Circuit, “retroactive reinstatement of benefits is appropriate in ERISA
12 cases where, as here, ‘but for [the insurer’s] arbitrary and capricious conduct, [the
13 insured] would have continued to receive the benefits’ or where ‘there [was] no evidence
14 in the record to support a termination or denial of benefits.’” *Grosz-Salomon v. Paul*
15 *Revere Life Ins. Co.*, 237 F.3d 1154, 1163 (9th Cir. 2001) (quoting *Quinn v. Blue Cross*
16 *& Blue Shield Ass’n*, 161 F.3d 472, 477 (7th Cir. 1998) (collecting cases)) (alterations in
17 *Grosz-Salomon*). In other words, “if an administrator terminates continuing benefits as a
18 result of arbitrary and capricious conduct, the claimant should continue receiving benefits
19 until the administrator properly applies the plan provisions.” *Pannebecker*, 542 F.3d at
20 1221; *see also Montour v. Hartford Life & Accident Ins. Co.*, 588 F.3d 623, 637 (9th Cir.
21 2009) (reversing the district court to hold that the plan administrator abused its discretion
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1 in terminating the claimant's LTD benefits and ordering the district court to reinstate the
2 benefits).

3 In *Pannebecker*, the district court held that the plan administrator failed to
4 properly apply the plan provisions and failed to obtain enough information to determine
5 whether the claimant could perform any occupation. *Pannebecker*, 543 F.3d at 1215.
6 The district court therefore remanded for compliance with the plan and the court's order.
7 *Id.* After the plan administrator followed the proper procedures, it denied benefits to the
8 claimant. *Id.* The district court upheld the plan administrator's decision and declined to
9 award retroactive benefits. *Id.* The Ninth Circuit affirmed the termination of benefits but
10 found that the district court should have awarded retroactive benefits from the date that
11 the plan administrator improperly terminated the claimant's benefits to the date that the
12 plan administrator properly denied the claim. *Id.* at 1215, 1221.

13 The instant case is similar to *Pannebecker* and therefore warrants reinstatement of
14 benefits. Here, like in *Pannebecker*, Reliance failed to properly apply ERISA's
15 procedural requirements prior to terminating Mr. Taylor's benefits. (*See generally* S.J.
16 Order.) Reliance terminated Mr. Taylor's benefits without any evidence contradicting
17 Dr. Uomoto's assessment of disabling cognitive disorder and without confirming whether
18 his symptoms from fibromyalgia had improved. (S.J. Order at 24 ("The court . . .
19 concludes that Reliance arbitrarily refused to credit Mr. Taylor's objective evidence that
20 he had disabling cognitive dysfunction . . .").) But for these arbitrary actions, Mr.
21 Taylor would have continued receiving benefits. *See Pannebecker*, 542 F.3d at 1221;
22 *Grosz-Salomon*, 237 F.3d at 1163. Accordingly, the court orders retroactive

1 reinstatement of Mr. Taylor’s benefits from the time they were terminated until the time
2 that the “regular occupation” benefits would have expired. *See Nash v. Life Ins. Co. of N.*
3 *Am.*, No. 08cv893-WQH-RBB, 2010 WL 5139087, at *35 (S.D. Cal. Dec. 9, 2010)
4 (awarding plaintiff retroactive reinstatement of benefits during the “regular occupation”
5 eligibility period but declining to award benefits during the “any occupation” eligibility
6 period).

7 However, because Reliance has never decided Mr. Taylor’s eligibility for benefits
8 under the “any occupation” standard, Mr. Taylor’s “request for ‘any occupation’ benefits
9 is not an appropriate subject of this action.” *Id.* In *Saffle v. Sierra Pacific Power Co.*
10 *Bargaining Unit Long Term Disability Income Plan*, 85 F.3d 455 (9th Cir. 1996), the
11 Ninth Circuit found that the district court erred in ordering payments beyond the initial
12 disability period. *Id.* at 460. The court wrote:

13 [Defendant] further argues that the district court erred by ordering benefit
14 payments beyond the initial 24-month disability period because Saffle
15 never applied for general disability payments and her eligibility for the
16 second-tier benefits has never been considered by the Benefit Committee.
17 We agree that there is nothing in the administrative record about general
18 disability. Of course it is the case, as Saffle contends, that she could not
19 have applied for general disability since she first must have been awarded
20 occupational disability benefits; but that affords no basis upon which to
21 uphold an order to pay benefits from the date of onset to the present.
22 Therefore, to the extent the district court ordered payments beyond the
initial 24-month disability period, it was error to do so.

19 *Id.* Other courts have come to the same conclusion that the retroactive reinstatement of
20 “any occupation” benefits is inappropriate where the plan administrator has not decided a
21 recipient’s eligibility under that standard. *See, e.g., Nash*, 2010 WL 5139087, at *35
22 (collecting cases); *Lavino v. Metro. Life Ins. Co.*, No. CV 08-2910, 2010 WL 234817, at

1 *13 (C.D. Cal. Jan. 13, 2010) (ordering reinstatement of benefits under “own occupation”
2 standard but remanding case to plan administrator to determine eligibility under “any
3 occupation” standard). Accordingly, the court remands Mr. Taylor’s case to Reliance for
4 a determination of whether he is entitled to continuing benefits after the expiration of the
5 “own occupation” benefits period. On remand, Reliance must accept additional evidence
6 from Mr. Taylor regarding his continuing disability and engage in a full and fair review
7 of his file.

8 **C. Pre-Judgment Interest**

9 Mr. Taylor requests pre-judgment interest at a rate of ten percent.³ (Trial Br. at 3.)
10 Reliance contends that the court should award interest at the rate proscribed by 28 U.S.C.
11 § 1961 because Mr. Taylor has provided no justification for awarding interest at a higher
12 rate. (Resp. at 4.) As explained below, the court agrees with Reliance.

13 The Ninth Circuit has held that a district court may award pre-judgment interest in
14 ERISA cases to compensate a plaintiff for the loss he incurred as a result of the
15 defendant’s nonpayment of benefits. *Dishman v. UNUM Life Ins. Co. of Am.*, 269 F.3d
16 974, 988 (9th Cir. 2001). Whether to award prejudgment interest “is a question of
17 fairness, lying within the court’s sound discretion, to be answered by balancing the
18 equities.” *Shaw v. Int’l Ass’n of Machinists & Aerospace Workers Pension Plan*, 750
19 F.2d 1458, 1465 (9th Cir. 1985) (quoting *Wessel v. Buhler*, 437 F.2d 279, 284 (9th Cir.

21 ³ Mr. Taylor also asks the court for additional time to consult an economist to determine
22 the fair rate of return. The court declines to allow additional time, however, because Mr. Taylor
had ample time in which to consult an economist prior to filing his reply brief but failed to do so.

1 1971)). Appropriate considerations include whether the “financial strain” of paying
2 pre-judgment interest would injure other plan beneficiaries and whether the defendants
3 acted in bad faith. *Id.*; *see also Dishman*, 269 F.3d at 988.

4 “[T]he interest rate prescribed for post-judgment interest under 28 U.S.C. § 1961
5 is appropriate for fixing the rate of pre-judgment interest unless the trial judge finds, on
6 substantial evidence, that the equities of that particular case require a different rate.”

7 *Grosz-Salomon*, 237 F.3d at 1164 (quoting *Nelson v. EG & G Energy Measurements*
8 *Group, Inc.*, 37 F.3d 1384, 1391 (9th Cir. 1994) (internal quotations omitted)).

9 According to the court in *Nelson*, to properly calculate the interest rate under 28 U.S.C. §
10 1961,

11 [t]he court applies the interest rate that was in effect at the time payment
12 was due to the plaintiff, not the rate applicable as of the date of the
13 judgment. To cover the costs of the lost investment potential of funds to
14 which a plaintiff was entitled, the interest rate should be calculated as
15 though the plaintiffs had invested the withheld funds at the 52-week
Treasury bill rate and then reinvested the proceeds annually at the new rate.
The Treasury bill rate at the beginning of each year presents a slightly more
accurate reflection of a 52-week Treasury bill investment than the average
during each year.

16 *Lee v. Sun Life Assur. Co. of Canada*, No. CV-08-140-ST, 2010 WL 2231943, at *7 (D.
17 Or. April 1, 2010) (internal citation and quotation omitted).

18 The court concludes that the facts of this case justify an award of pre-judgment
19 interest. Indeed, Reliance does not oppose the award of pre-judgment interest, it merely
20 objects to Mr. Taylor’s proposed rate of ten percent. The court further determines that
21 the amount of interest should be calculated according to the formula set forth in *Nelson*
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1 and summarized in *Lee*. Mr. Taylor has not provided any evidence, much less
2 “substantial evidence,” justifying a higher rate. *See Grosz-Salomon*, 237 F.3d at 1164.

3 **D. Attorneys’ Fees and Costs**

4 Mr. Taylor requests attorneys’ fees in the total amount of \$56,502.50 and costs in
5 the amount of \$588.15. (Trial Br. at 3; Krafchick Decl. (Dkt. # 57); Supp. Krafchick
6 Decl. (Dkt. # 58) ¶ 7.) Reliance opposes the award of any fees, arguing that Mr. Taylor’s
7 request is improper because he fails to address how he has satisfied the appropriate legal
8 standards under which the court determines whether to award fees, and he does not
9 support the reasonableness of the requested rates or the requested hours. (Resp. at 4-8.)
10 For the reasons explained below, the court concludes that an award of attorneys’ fees and
11 costs is appropriate in this case but that Mr. Taylor has not established the reasonableness
12 of his request. The court, therefore, denies the fee request without prejudice to filing an
13 amended motion within 21 days of the entry of this order.⁴

14 **1. Whether to Award Attorneys’ Fees and Costs**

15 In an ERISA action, the court may, at its discretion, award reasonable attorneys’
16 fees and costs to either party “as long as the fee claimant has achieved ‘some degree of
17 success on the merits.’” *Hardt v. Reliance Standard Ins. Co.*, 130 S. Ct. 2149, 2152
18 (2010) (quoting *Ruckelshaus v. Sierra Club*, 463 U.S. 360, 694 (1983)); *see also* 29
19 U.S.C. § 1132(g)(1). If the court concludes that the claimant satisfies the standard of

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21 ⁴ The court grants Mr. Taylor leave to submit an amended motion for attorneys’ fees
22 because “a successful ERISA participant should ordinarily recover an attorney’s fee,”
McElwaine v. U.S. West, Inc., 176 F.3d 1167, 1172 (9th Cir. 1999), and, as discussed below, an
award here is warranted under the *Hummel* factors.

1 success set forth in *Hardt*, it must consider the five factors outlined by the Ninth Circuit
2 in *Hummell v. S.E. Rykoff & Co.*, 634 F.2d 443 (9th Cir. 1980), to determine whether to
3 award reasonable attorneys' fees and costs. *Simonia v. Glendale Nissan/Infiniti*
4 *Disability Plan*, 608 F.3d 1118, 1119 (9th Cir. 2010). Those factors are:

5 (1) the degree of the opposing parties' culpability or bad faith; (2) the
6 ability of the opposing parties to satisfy an award of fees; (3) whether an
7 award of fees against the opposing parties would deter others from acting
8 under similar circumstances; (4) whether the parties requesting fees sought
to benefit all participants and beneficiaries of an ERISA plan or to resolve a
significant legal question regarding ERISA; and (5) the relative merits of
the parties' positions.

9 *Hummell*, 634 F.2d at 453. When the court applies these factors, it "must keep at the
10 forefront ERISA's remedial purposes that should be liberally construed in favor of
11 protecting participants in employee benefit plans." *McElwaine v. U.S. West, Inc.*, 176
12 F.3d 1167, 1172 (9th Cir. 1999). The court also applies "a 'special circumstances' rule in
13 which a successful ERISA participant should ordinarily recover an attorney's fee unless
14 special circumstances would render such an award unjust." *Id.* (quotations omitted).

15 There is no serious question that Mr. Taylor has achieved success on the merits.
16 See *Hardt*, 130 S. Ct. at 2152. Accordingly, the court proceeds to the *Hummell* factors
17 despite Reliance's correct assertion that Mr. Taylor fails to address them in his briefing.
18 First, although the court found that Reliance abused its discretion, there is no evidence
19 that it acted in bad faith. Bad faith, however, "is not a prerequisite to an ERISA fee
20 award." *McElwaine*, 176 F.3d at 1173. Second, it is very likely that Reliance would be
21 able to satisfy the fee award without hardship, thus this factor weighs in favor of a fee
22 award. Third, an award of fees could deter other plan administrators from failing to

1 credit uncontroverted evidence of a disability, therefore this factor also weighs in favor of
2 a fee award. *See Sluimer v. Verity, Inc.*, No. C-08-1220, 2008 WL 5048434, at *3 (N.D.
3 Cal. Nov. 24, 2008) (“An award of attorneys’ fees based on a plan administrator’s
4 incorrect decision signals to other plan administrators that they should not similarly abuse
5 their discretion.”). Fourth, there is no evidence that Mr. Taylor sought to benefit all plan
6 participants or to resolve significant legal questions regarding ERISA, therefore this
7 factor is neutral. Fifth, the court has granted summary judgment in Mr. Taylor’s favor
8 because Reliance abused its discretion, which tips this factor in favor of a fee award.

9 In sum, the court concludes that the *Hummell* factors weigh in favor of awarding
10 Mr. Taylor reasonable attorneys’ fees and costs. Further, no special circumstances would
11 render a fee award unjust. Mr. Taylor is entitled to an award of reasonable attorneys’
12 fees and costs pursuant to 29 U.S.C. § 1132(g)(1).

13 **2. Reasonable Amount of Attorneys’ Fees and Costs**

14 In determining the reasonable amount of fees and costs to award, the court uses a
15 hybrid lodestar/multiplier approach. *McElwaine*, 176 F.3d at 1173. The court arrives at
16 the “lodestar” figure by multiplying the number of hours reasonably expended by a
17 reasonable hourly rate. *Id.* The court may then apply a “multiplier” to raise or lower this
18 amount based on factors set forth in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70
19 (9th Cir. 1975). “The party seeking fees bears the burden of documenting the hours
20 expended in the litigation and must submit evidence supporting those hours and the rates
21 claimed.” *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 945-46 (9th Cir. 2007) (citing
22 *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)).

1 **a. Hourly Rate Charged**

2 In the Ninth Circuit, “the determination of a reasonable hourly rate ‘is not made by
3 reference to the rates actually charged the prevailing party.’” *Welsh*, 480 F.3d at 946
4 (quoting *Mendenhall v. Nat’l Transp. Safety Bd.*, 213 F.3d 464, 471 (9th Cir. 2000)).
5 “Rather, billing rates should be established by reference to the fees that private attorneys
6 of an ability and reputation comparable to that of prevailing counsel charge their paying
7 clients for legal work of similar complexity.” *Id.* (internal quotation omitted).
8 “Affidavits of the plaintiffs’ attorney and other attorneys regarding prevailing fees in the
9 community, and rate determinations in other cases, particularly those setting a rate for the
10 plaintiffs’ attorney, are satisfactory evidence of the prevailing market rate.” *United*
11 *Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir.1990) (citing
12 *Chalmers v. City of L.A.*, 796 F.2d 1205, 1214 (9th Cir.1986)). “Generally, when
13 determining a reasonable hourly rate, the relevant community is the forum in which the
14 district court sits.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008)
15 (vacating award of attorneys’ fees in Fair Debt Collection Practices Act case where
16 district court failed to identify the relevant community or address the prevailing market
17 rate).

18 Mr. Taylor requests fees at the following rates for the timekeepers who worked on
19 his file: \$500 per hour for Steven Krafchick, an attorney with 28 years of experience;
20 \$275 per hour for Kat (last name unknown); \$275-\$300 per hour for Pamela (last name
21 unknown); \$125 per hour for Julia Busko, a paralegal with over 25 years experience; \$50
22 per hour for Susannah (last name unknown), a paralegal with over one year experience;

1 and \$50 per hour for Mallory Griffith, a legal assistant with over one year of experience.
2 Mr. Taylor asserts that Mr. Krafchick's rate is reasonable because it is the rate he has
3 charged clients for the past three years. (Reply at 8.) He does not include Kat's or
4 Pamela's job titles or their experience levels. He does not address the reasonableness of
5 the rates charged for the paralegals or the legal assistant. Reliance contends that Mr.
6 Taylor has not met his burden of establishing the reasonableness of the requested rates.
7 (Resp. at 5-8.)

8 The court concurs with Reliance. Mr. Taylor has presented no evidence regarding
9 the prevailing market rate in the Western District of Washington for ERISA plaintiffs'
10 attorneys, paralegals, or administrative assistants. In fact, as noted above, the court has
11 no information regarding Kat's or Pamela's job titles or experience levels. Moreover,
12 under the standard set forth in *Welsh*, Mr. Taylor cannot satisfy his burden merely by
13 asserting that Mr. Krafchick's fee is reasonable because it is the fee he charges his
14 clients. Given the dearth of evidence on this issue, the court cannot determine the
15 reasonable rate for the legal work that was done on Mr. Taylor's case.

16 **b. Hours Expended**

17 In performing the loadstar calculus, the court excludes those hours that are not
18 reasonably expended because they are "excessive, redundant, or otherwise unnecessary."
19 *Hensley*, 461 U.S. at 434. Reliance contends that the court cannot determine the
20 reasonableness of the hours expended because the descriptions are "so vague and non-
21 descriptive that it is impossible to know exactly what tasks were being performed."
22 (Resp. at 7.) Reliance also contends that the court should cut the fee award to account for

1 the claims Mr. Taylor asserted that the court dismissed, the discovery that was not
2 allowed, and the discovery motion that was mostly denied. (*Id.* at 8.)

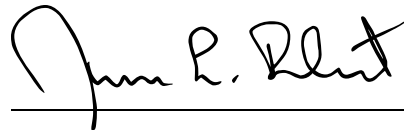
3 The court will address the reasonableness of the hours expended in ruling on an
4 amended motion for attorneys' fees, should Mr. Taylor submit one. Nevertheless, the
5 court leaves the parties with a few thoughts to aid them in any future briefing. First, Mr.
6 Taylor has not identified for the court how many hours each timekeeper worked; rather,
7 he submitted a document listing all time entries for all timekeepers (well over 100
8 entries). To aid the court's application of the loadstar calculus, Mr. Taylor must include
9 the number of hours each timekeeper worked. Second, although some of the entries are
10 improperly vague, the court disagrees with Reliance that the "vast majority" suffer from
11 this defect. In future briefing, it would be helpful to the court if Reliance more
12 specifically identified the descriptions that it finds improperly vague. Similarly, it would
13 be helpful for Reliance to specifically identify, to the extent possible, any fees that it
14 claims should be cut because they were improperly incurred in relation to unsuccessful
15 motions.

16 **III. CONCLUSION**

17 For the foregoing reasons, the court: (1) grants summary judgment to Mr. Taylor;
18 (2) orders Reliance to pay Mr. Taylor benefits from the time they were terminated until
19 the time that the "any occupation" eligibility standard went into effect; (3) remands Mr.
20 Taylor's case to Reliance for a determination of whether Mr. Taylor is entitled to receive
21 benefits under the "any occupation" eligibility standard; (4) orders Reliance to accept
22 additional evidence from Mr. Taylor regarding his continuing disability and to engage in

1 a full and fair review of his file; (5) awards Mr. Taylor pre-judgment interest at the rate
2 provided for in 28 U.S.C. § 1961; (6) orders the parties to submit to the court, within 14
3 days of the entry of this order, a proposed order of judgment that reflects the court's
4 disposition of this matter as set forth in this order, including a calculation of the total
5 amounts of back-benefits and pre-judgment interest currently owed to Mr. Taylor; and (7)
6 denies Mr. Taylor's request for attorneys' fees and costs without prejudice to re-filing an
7 amended motion within 21 days of the entry of this order.

8 Dated this 13th day of January, 2012.

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12 JAMES L. ROBART
13 United States District Judge
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